

FREQUENTLY ASKED QUESTIONS AND ANSWERS REGARDING STATE SAFE ACT IMPLEMENTATION DELAYS

1. Delays in Approval of State-Specific Tests:

QUESTION: Our state-specific SAFE MLO licensing test was only recently made available. This results in MLOs in our State having insufficient time to meet the state testing requirement by the July 31, 2010 deadline. Will HUD find that the state has not met the minimum requirements of the SAFE Act if the state does not require the MLOs to have passed the state MLO test by the July 31, 2010 deadline?

ANSWER: HUD is aware that several state tests developed by the NMLSR were not made available until recently or will not be available until later this year, and that these circumstances are beyond the control of the regulators in these states. HUD recognizes that MLOs in these states will need sufficient time after release of the tests to schedule their test appointments and pass the test. In its January 2009 Commentary, HUD encouraged states to act expeditiously to implement the SAFE Act standards, in recognition of the statutory concern that MLOs who do not meet the standards pose a significant risk to borrowers and the housing finance system. HUD also acknowledged in the Commentary, however, that states may need to provide for a reasonable period following enactment of their SAFE Act-compliant laws for MLOs to be licensed. HUD generally views that a reasonable delay in meeting the state test component of licensure in states whose tests were made available from June 1, 2010 through September 15, 2010 is one that does not extend past December 31, 2010. For states whose test will not be available until after September 15, 2010 through December 31, 2010, HUD generally views that a reasonable delay for completion of the state test component is one that does not extend past March 31, 2011. HUD will continue to monitor the efforts of states to comply with the SAFE Act requirements and may consider other delays on a case-by-case basis.

2. Delays in Implementing Licensing Requirements for Certain Individuals:

QUESTION: As the regulator charged with enforcing our own state's SAFE Act-compliant laws, we believe we have licensed, or established regulations requiring the licensing of, those individuals to whom the law was most clearly intended to apply: mortgage brokers and anyone engaged as loan officers in the traditional private-sector mortgage lending business. However, we believe there are ambiguities in the SAFE Act, and other questions arising from HUD's proposed rule, that apparently will not be resolved until a final rule is issued. These include, among others, whether the state is required to license employees working for our state housing finance agency, housing counselors who work for nonprofit housing providers, and sellers of owner-financed dwellings. As such, we prefer to wait until HUD issues a final rule before deciding whether to require licensing of these and other individuals where there is some debate as to the need for licensing. Will HUD grant us a reasonable amount of time following publication of the final rule to conform our state licensing requirements to the provisions of the final rule?

ANSWER: HUD recognizes—and the 5300 comments it received in response to its proposed rule reflect—that there are certain contexts in which HUD will need to issue clear direction in its final rule regarding the scope of coverage of individuals who must be licensed under the SAFE Act. HUD recognizes that state regulators making reasonable interpretations of the SAFE Act may find it prudent to delay determinations of whether certain individuals must be licensed until a final rule is published. HUD had acknowledged in its January 2009 Commentary that states may need to provide for a reasonable period following enactment of their SAFE Act-compliant laws for MLOs to be licensed. Accordingly, while HUD expects the states to continue their efforts toward full compliance with the SAFE Act and will

continue to closely monitor those efforts, HUD will allow a reasonable amount of time for states to adjust their licensing systems to meet the final rule's requirements.

3. Delays in Implementing Licensing Requirements – Additional Guidance:

QUESTION: Your recent SAFE FAQ regarding state delays in implementing licensing requirements specifically mentioned coverage issues regarding employees of state housing finance agencies, housing counselors who work for nonprofit housing providers, and sellers of owner-financed dwellings. Are there other examples regarding coverage of particular individuals by the licensing requirements where states may want to delay making determinations pending HUD's issuance of a final rule?

ANSWER: Yes. HUD's previous FAQ referred to those three specific coverage issues as examples only because of the large volume of inquiries that we received from state regulators requesting guidance. In other contexts where state regulators have a reasonable belief that coverage is an issue because the activities of certain individuals may or may not meet the requirements for "engaging in the business of a loan originator", it may be prudent to delay determinations of whether those individuals must be licensed until HUD publishes its final rule.